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**From:** Hurlid, Kathy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2F3B04131F1145FCB4CCF5B0A64C1AC4-KHURLD]  
**Sent:** 11/13/2019 5:24:44 PM  
**To:** Kelly, Stephanie [kelly.stephanie@epa.gov]  
**Subject:** FW: the requested memos  
**Attachments:** State Assumption of 404 permitting authority and ESA consultation.pdf; rgl83-06.pdf; NMFS comments re EPA 404 ESA position.pdf; USFWS comments on EPA 404 ESA position.pdf; Corps Materials on ESA.pdf; KWeinerESAconsultationAnalysis.pdf; NJexperienceESA-94chronology.pdf; OW to ECOS-ASWM 404 Assumption final.pdf; SilvaRsp4-5.pdf; ECOS wkgrp summary to NS re 404 assumption 7-11.pdf; ECOS incoming Letter on 404 Assumption and ESA.pdf

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**From:** Hurlid, Kathy  
**Sent:** Monday, October 07, 2019 2:13 PM  
**To:** Goodin, John <Goodin.John@epa.gov>; Frazer, Brian <Frazer.Brian@epa.gov>  
**Cc:** Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>  
**Subject:** the requested memos

John:

Per your request, I've attached the "key" back and forth documents that were considered prior to the 2010 letter. They are attached and include:

- 1) The incoming letters from ECOS – first is request to assist on workgroup, second is request for clarity on ESA to Silva, which while general was based upon discussions of an ECOS convened workgroup and third is summary of issues (letter to N. Stoner)
- 2) A legal analysis by Heidi Nalven in prep for the drafting of the letter
- 3) Responses from the NMFS and USFWS regarding EPA's proposed position on programmatic consultation (we met with them several times too)
- 4) The response to ECOS

And for fun:

- I've added Corps Rgl 183, materials on ESA,
- KWeiner's analysis on requirement for Consultation,
- Lori Williams chronology of the ESA consultation in NJ (I add this because NJ has far fewer listed species than FL or AZ and that consultation did not get finalized within the 120 approval timeframe.)

And lastly a bit of history: The ECOS led workgroup established to look to "LEAN" the 404(g) program and which requested this 2010 "rushed" letter clarifying ESA consultation on approval had ACWA as a member. The ACWA rep .... Alex Dunn.

Note: I reached out to Alex and she does not recall where the states stood on programmatic consultation.

Kathy Hurlid  
Clean Water Act 404(g) – U.S. EPA Lead  
Office of Wetlands, Oceans, and Watersheds  
E-mail: [Hurlid.Kathy@epa.gov](mailto:Hurlid.Kathy@epa.gov)  
Phone: 202-566-1269

USPS Address:

U.S. EPA  
1200 Pennsylvania Ave., NW (4502T)  
Washington, DC 20460

Delivery Address:

U.S. EPA  
1301 Constitution Ave., NW (room 7424F)  
Washington, DC 20004